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LETTER DATED 6 NOVEMBER 1998 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the misfortune to report once again to the Security Council the continuing refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the International Tribunal, as required by resolutions of the Security Council and the statute of the Tribunal. The occasion for making the present report is the failure of the Federal Republic of Yugoslavia to issue visas to investigators of the Office of the Prosecutor so that they may conduct investigations in Kosovo. In doing so, the Federal Republic of Yugoslavia has stated that it does not accept any investigation of the International Tribunal in Kosovo and Metohija.

Clearly this position contravenes the explicit decisions of the Security Council. In resolution 1160 (1998) of 31 March 1998, the Council urged the Office of the Prosecutor of the International Tribunal to begin gathering information related to the violence in Kosovo. On 23 September 1998, in resolution 1199 (1998), the Security Council found that events in Kosovo constitute a threat to peace and security in the region. In that resolution, the authorities of the Federal Republic of Yugoslavia were obligated to "cooperate fully with the Prosecutor of the International Tribunal for the Former Yugoslavia in the investigation of possible violations within the jurisdiction of the Tribunal". Finally, less than two weeks ago, on 24 October 1998, the Security Council adopted resolution 1203 (1998), in which it called for a prompt and complete investigation of all atrocities committed in Kosovo. Further, full cooperation with the Tribunal was required, "including compliance with its orders, requests for information and investigations".

By a letter dated 15 October 1998, the Prosecutor advised Slobodan Milosevic, President of the Federal Republic of Yugoslavia, of her intention to lead an investigative mission to Kosovo. She sought assurance that visas would be issued to enable the investigations to continue forthwith. The failure of the Federal Republic of Yugoslavia to provide her Office with the appropriate travel documents for investigators prevents her from carrying out the mandate of the Security Council. By a letter dated 5 November 1998, the

Prosecutor requested that I notify the Security Council of the failure of the Federal Republic of Yugoslavia to fulfil its obligations under article 29 of the statute of the Tribunal.

I need not remind you that this is the fourth time the President of the Tribunal has notified the Security Council of non-compliance by the Federal Republic of Yugoslavia. As recently as last month, I addressed the Council regarding the failure of the Federal Republic of Yugoslavia to arrest and transfer to the custody of the Tribunal three persons indicted by the Tribunal on 7 November 1995 (S/1998/990). The intentional and continuous refusal by the Federal Republic of Yugoslavia to comply with its clear and incontrovertible legal obligations to the Tribunal, I submit, is an affront to the Security Council and to all law-abiding nations.

The Security Council has issued presidential statements in response to prior reports of the Tribunal of non-compliance by the Federal Republic of Yugoslavia. This has failed to bring about the required cooperation with the Tribunal. Therefore, I respectfully seek from the Security Council measures which are sufficiently compelling to bring the Federal Republic of Yugoslavia into the fold of law-abiding nations.

The Tribunal was created by the Security Council to investigate and prosecute persons responsible for some of the most horrific human rights violations the world has witnessed since the United Nations was established some 53 years ago. As a subsidiary organ and a creation of the Security Council, and lacking mechanisms to enforce State compliance, we rely on the Security Council to bring non-cooperating States into compliance. I urge you to provide the support necessary to enable the Tribunal to discharge its mandate.

(Signed) Gabrielle KIRK McDONALD
President